

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

BLUE SPIKE, LLC,

Plaintiff,

V.

TEXAS INSTRUMENTS, INC., *et al.*,

Defendants.

BLUE SPIKE, LLC,

Plaintiff,

V.

AOPTIX TECHNOLOGIES, INC.,

Defendant.

**DECLARATION OF THOMAS RAINWATER IN SUPPORT OF DEFENDANT AOPTIX
TECHNOLOGIES, INC.'S MOTION TO DISMISS**

I, Thomas Rainwater, declare as follows:

1. I am the Contracts and Security Manager of AOptix Technologies, Inc. (“AOptix”). I have personal knowledge of the facts set forth herein and could and would testify competently thereto if called as a witness. I make this Declaration in support of Defendant AOptix’s Motion to Dismiss the Complaint for Lack of Personal Jurisdiction and Improper Venue.

2. AOptix, which was founded in 2000, is a company organized under the laws of the State of Delaware. AOptix was originally headquartered in Hawaii, but now maintains its principal place of business at 675 Campbell Technology Parkway, Campbell, California 95008. AOptix also maintains offices in Washington D.C., London, Dubai, and Singapore.

3. AOptix has no office or other place of business in Texas. AOptix has never operated or maintained any facilities in Texas. AOptix has never maintained a mailing address in Texas.

4. AOptix is not registered or licensed to do business in Texas. Nor does AOptix have an agent of service of process in Texas.

5. AOptix has no directors or officers that live or work in Texas. Nor does AOptix have any employees that reside in Texas.

6. AOptix has no bank accounts in Texas.

7. AOptix has no interest in or possession of real property within Texas. AOptix has never owned real property in Texas, nor has AOptix leased any real property in Texas.

8. AOptix has no interest in or possession of personal property within Texas. AOptix does not own or lease any personal property within Texas.

9. AOptix has not availed itself of the Texas court system as a litigant other than being named as Defendant in this action.

10. AOptix operates a website, www.aoptix.com, accessible throughout the world. Sales to customers cannot be consummated through the website. The website is hosted on servers residing in California.

11. AOptix has not manufactured any product, including the products accused of infringement in this action as identified in paragraph 27 of the Complaint (the "Accused Products"), in Texas.

12. As Contracts and Security Manager, I am involved in overseeing contracts for sales of the Accused Products. I am familiar with the manner and method by which AOptix maintains its sales and contract information. Such information is kept in the ordinary course of business, including the location of the purchaser of any Accused Products.

13. In preparing this declaration, I performed searches using AOptix's sales database to investigate whether AOptix made any sales or offers to sell to persons or entities in Texas. The database contains sales records maintained in the ordinary course of business.

14. I determined upon my review of the above-referenced business records that AOptix has sold no product whatsoever and made no offers to sell, including the Accused Products, in Texas and has generated no revenue from sales to customers in Texas.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on this 11th day of March, 2013 at Campbell, California.



Thomas Rainwater

11 Mar 2013

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

March 11, 2013

/s/ Bryan A. Kohm

Bryan A. Kohm